

BOARD OF APPEALS CASE NO. 5171

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BEFORE THE

APPLICANTS: Raymond & Merry Gerst

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ZONING HEARING EXAMINER

**REQUEST: Variances for an existing deck and
to store a recreational vehicle in the R1 District;
2016 Park Beach Drive, Aberdeen**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/22/01 & 8/29/01

HEARING DATE: November 7, 2001

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Record: 8/24/01 & 8/31/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Raymond and Merry Gerst, are seeking a variance, pursuant to Section 267-23C(1)(a)(6) of the Harford County Code, to allow an existing deck within the 50 foot rear yard setback (existing 10 feet), and a variance pursuant to Section 267-26D(9), to allow an existing recreational vehicle to be located within the front yard setback in an R1/Urban Residential District.

The subject parcel is located at 2016 Park Beach Drive, Aberdeen, Maryland, and is more particularly identified on Tax Map 63, Grid 4A, Parcel 106, Lot 58. The parcel consists of 0.34 acres more or less, is zoned R1/Urban Residential and is entirely within the Second Election District.

The Applicant, Mrs. Mary Gerst, appeared and testified that she and her husband own the subject property which backs up to the Bush River. The lot was described as long, narrow and somewhat pie-shaped. The house faces the water as do the other waterfront homes in the neighborhood. Thus, what is actually her back yard is considered by Harford County Code to be the front yard. Her property has 62 feet of waterfront and she and her husband constructed a deck that measures 12 feet by 25 feet on the waterside of the house. The Applicant stated that most of the homes in the immediate vicinity have decks that go directly to the water, some are two-tiered and many are much larger than her deck. Because of the narrowness and overall size of the lot, there is no place to put the deck other than its present location.

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On the road side of the house there was an existing parking pad that was there when the Applicants' purchased their home. They have used that pad over the years to park cars, boats, trailers and in recent years, large RV's. Their present RV is a 35 foot motor home that they use for extensive travel. Mrs. Gerst stated that the couple will travel in the RV four months of the year so the RV will only be parked there for part of the year. The parking pad is directly in front of the rear of their neighbor's home and there is no practical way to screen the RV from view of that home.

Mr. Anthony McClune appeared and testified as representative of the Department of Planning and Zoning. Mr. McClune stated that the Department recommends approval of the variance related to the deck. He agrees that the property is unique, long, narrow and fronts to the waters of the Bush River. According to Mr. McClune, there is simply no other place on this property for a deck and because the Bush River is to the deck side of the house, its encroachment into the setback has absolutely no impact on neighboring properties thus, the purpose of the zoning ordinance is not offended.

As to the parking of the RV, however, the parking pad used to park the RV is directly adjacent to the neighboring house and when the RV is parked there it is only 8-10 feet from the structure itself. Because of the height of the RV, it is visible from every window of the neighboring home along the road side and blocks any possible view from that side of the adjacent house. There is no possible way to screen such a large vehicle from other properties, particularly the immediately adjacent home. Covering the RV is ineffective in meeting the screening requirements of the Code, according to Mr. McClune.

There were no persons appearing in opposition to the request.

CONCLUSION:

The Applicants, Raymond and Merry Gerst, are seeking a variance, pursuant to Section 267-23C(1)(a)(6) of the Harford County Code, to allow an existing deck within the 50 foot rear yard setback (existing 10 feet), and a variance pursuant to Section 267-26D(9), to allow an existing recreational vehicle to be located within the front yard setback in an R1/Urban Residential District.

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Section 267-23C(1)(a)(6) of the Harford County Code provides:

“Exceptions and modifications to minimum yard requirements.

(1) Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.”

Section 267-26D(9) of the Harford County Code provides:

“Accessory uses in agricultural and residential districts. The following accessory uses shall be permitted in agricultural and residential districts upon issuance of a zoning certificate, unless otherwise specified, in accordance with the following:

(9) Recreational vehicles and equipment shall be stored in the rear yard or in the side yard if completely screened from any adjacent residence and the side yard setback of the district for the principal use is maintained. No living or sleeping in or other occupancy of a recreational vehicle, camper or trailer shall be permitted for more than seven (7) days within any ninety-day period unless the location has been approved for such use. No zoning certificate is required.”

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should

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be granted. According to the guidance provided by the Court, the variance process is a two-step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

The Hearing Examiner concludes that this property is unique. It is long, narrow, pie shaped and fronts on the Bush River. The property, because of its size and shape, limit severely the available space for any other improvements or storage/recreational structures. The deck is on the waterside of the house and offends nobody by its location or use. There is no other practical or possible location for a deck on this property and it is situated just like the many other water side decks located in this area of Harford County. The hearing Examiner recommends approval of the variance related to the deck.

As to the parking of the RV, the Hearing Examiner cannot find the necessary practical difficulty that would allow a recommendation to approve this request. The RV parked at the proposed location is unscreened from the view of an adjacent house which is only 8-10 feet away from a 35 foot long and 10 foot high RV. Such a vehicle unnecessarily blocks the view from that adjacent house and interferes with sunlight. The Code requires that RV's be parked in the rear yard or side yard and be completely screened from any adjacent residence. Under the circumstances described by the Applicant and the Department of Planning and Zoning, it would require completely ignoring the provisions of the ordinance and the reasons therefore to allow this RV to be parked at this location.

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The adverse impact to the adjacent property cannot be mitigated in any way and the Hearing Examiner is compelled to recommend denial of the requested variance as to the RV.

In summary, the Hearing Examiner recommends approval of the Applicant's request related to an existing deck, subject to the Applicant obtaining any and all necessary permits and inspections.

The Hearing Examiner recommends denial of the Applicant's request related to parking of an existing RV within the front yard setback.

Date NOVEMBER 27, 2001

William F. Casey
Zoning Hearing Examiner